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OFFICE OF PETITIONS

In re Application of	:
Derek K. Gauger	:
Application No. 10/039,999	: DECISION DISMISSING
Filed: 24 October, 2001	: PETITION
Attorney Dckt No. GDK-100-B	:

This is a decision on the petition filed on 18 June, 2002, which is treated as a petition under 37 CFR 1.53 requesting that the Notice to File Missing Parts of Nonprovisional Application mailed on 6 May, 2002, be vacated to the extent that it stated that Figures 28, 29, 30 and 32 described in the specification appeared to have been omitted.

The petition is **DISMISSED**.

On 24 October, 2001, the application was filed.

On 6 May, 2002, the Office of Initial Patent Examination (OIPE) mailed a Notice to File Corrected Application Papers stating that the application had been accorded a filing date of 24 October, 2001, but that, *inter alia*, Figures 28, 29, 30, and 32 described in the specification appeared to have been omitted from the application. Additionally a substitute specification in compliance with 37 CFR 1.52 and substitute drawings in compliance with 37 CFR 1.84 were required.

In response, on 18 June, 2002, the present petition was filed. Petitioner argues that Figures 28, 29, 30, and 32 of the drawings were filed on 24 October, 2001. In support, petitioner has supplied a copy of his postcard receipt with the present petition. The postcard receipt bears an Office-date stamp of 10/24/01, with the above-identified application number. The portion of the postcard which itemizes the application elements, including the number of sheets and figures of drawings, is missing however. Petitioner states that the postcard was "mangled" when it was received from the USPS. Petitioner has

also supplied an undamaged copy of the postcard, presumably made before the application was mailed to the USPTO, which does not have an Office date stamp on it.

A review of the record reveals that 21 sheets of drawings are located among the application papers received on 24 October, 2001. No Figures 28, 29, 30, and 32 of drawings are located among the application papers deposited on 24 October, 2001. Where the records of the Office (e.g. the file of the application) contain any document(s) or fee(s) corresponding to the contents of the correspondence at issue, the Office will rely upon its official record of the contents of such correspondence in the absence of convincing evidence (e.g. a postcard receipt under MPEP 503 containing specific itemization of the document(s) or fee(s) purported to have been filed with the correspondence at issue) that the Office received and misplaced any document(s) or fee(s) that is not among the official records of the Office.

While it is a most unfortunate situation if petitioner's postcard was damaged prior to its return to petitioners, the postcard, as presented, does not serve as *prima facie* evidence that 23 sheets of drawings containing Figures 28, 29, 30, and 32 were among the application papers received in the USPTO on 24 October, 2001, as the postcard does not show that these items were specifically itemized thereon. Furthermore, the application transmittal sheet evidences, at best, petitioner's intent to file 23 sheets of drawings.

It is noted that the top portion of the postcard appears to be superimposed over the lower portion of the postcard in the copy provided with the present petition. Petitioner may wish to review his files and verify that no other portions of the postcard are contained therein. If additional pieces of the postcard containing the itemization of the application elements are located, petitioner should submit the original postcard with a renewed petition to the USPTO.

As petitioner has not provided convincing evidence that Pages 28, 29, 30, and 32 were filed on 24 October, 2001, the petition is dismissed. The petition fee will not be refunded.

Receipt is acknowledged of the substitute specification and corrected drawings filed on 18 June, 2002. The substitute specification and corrected drawings are not considered part of the original disclosure and must be reviewed by the examiner for new matter.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 24 October, 2001, using the application papers filed on that date as the original disclosure. Initial Patent Examination Division will review the substitute specification and corrected drawings for compliance with 37 CFR 1.52 and 37 CFR 1.84, respectively.

Telephone inquiries concerning this matter may be directed to the undersigned at (703)308-6918.



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